

The Free Gaza Movement

Breaking the Siege of Gaza

F.G. Human Rights Projects, Ltd
Registered Charity #HE 246993
122 Athalassis Avenue, POB 28779
2082 Nicosia, Cyprus
Tel: +357 99 081 767
Email: friends@freegaza.org

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Dear Prime Minister Balkenende,

Thank you for your letter of 12 August 2009. We appreciate your stated concern for the humanitarian situation in the Gaza Strip and your call on Israel to allow Gaza access to humanitarian aid and the materials needed for reconstruction. It is important to note however that the dire situation that currently exists in Gaza is a result of deliberate policies by Israel designed to punish the people of Gaza. Therefore, in order to address the calamitous conditions imposed upon the people, one must work to change the policies causing the crisis.

The United Nations has referred to Israel's near hermetic closure of Gaza as "collective punishment,"¹ strictly prohibited under Article 33 of the Fourth Geneva Convention. As a signatory to the Convention, The Netherlands has an obligation to ensure respect for its provisions.² As such, The Netherlands has a legal, if not a moral, obligation to take more concrete action in defense of the lives and well-being of the Palestinian people.

In your letter you state that the "Oslo Accords stipulate that Israel is charged with the safety of the territorial waters of Gaza and is in this respect authorized to take action against entering ships." This statement is problematic for a number of reasons:

- (1) Israel is in violation of virtually all provisions of the Oslo Accords, including the agreement to allow Palestinian fishermen to fish 20 nautical miles out from the seacoast,³ or even 12 nautical miles as stipulated by the subsequent Bertini Agreement. Therefore it is futile to evoke the Oslo Accords as a document that is still binding. The term of reference should be, as reaffirmed by the International Court of Justice in its 9 July 2004 advisory opinion on the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, international law.
- (2) Even if we accept the Oslo Accords as still relevant, Gaza's territorial waters extend out 12 nautical miles from the Gaza coast.⁴ Our boat, the *Spirit of Humanity* was hijacked in international waters, 18-19 miles from the coast of Gaza. Under the Oslo Accords Israel reserved the right to patrol up to 20

¹ John Holmes, *Briefing to the UN Security Council on the situation in the Middle East, including the Palestinian question*, 27 January 2009.

² Convention (IV) relative to the Protection of Civilian Persons in Time of War. Geneva, 12 August 1949, Article I stating, "The High Contracting Parties undertake to respect and to ensure respect for the present Convention in all circumstances." See also, *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, I. C. J. Reports 2004, p. 136 at 138; <http://www.icj-cij.org/docket/files/131/1671.pdf>.

³ Gaza-Jericho Agreement Annex I - Protocol Concerning Withdrawal of Israeli Military Forces and Security Arrangements, Article XI(1)(a)(2)(a-b).

⁴ United Nations Convention on the Law of the Sea, 10 December 1982, Sec. 2, Art. 3.

nautical miles from the Gaza coast, but this right, to be in accordance with international law, is limited. According to the U.N. Convention on the Law of the Sea⁵, the area between 12 and 24 nautical miles from the coast of the adjacent state is a “contiguous zone” where the coastal state, or in this case the Occupying Power, may exercise the control necessary to prevent infringement of its customs, fiscal, immigration or sanitary laws and regulations within its territory or territorial sea.⁶ Israel’s actions towards our boat were not in furtherance of any of the above.

- (3) Again, if we accept the provisions of the Oslo Accords as still binding, the agreement itself confirms the above. Article XI(1)(b)(4) of the Gaza-Jericho Agreement Annex I, provides that Israel’s responsibilities for security entitle it to take “measures necessary against vessels suspected of being used for terrorist activities or for smuggling arms, ammunition, drugs, goods, or for any other illegal activity.” The Cypriot Port Authorities inspected our vessel before we left the port of Larnaca and certified that our boat, its cargo, and the volunteers aboard the *Spirit of Humanity* on 30 June 2009 did not constitute any kind of threat to Israel. Nor did Israel claim that it suspected our vessel of being used for any of the aforementioned activities that would have given Israel the right, under the Oslo Accords, to take action against us.
- (4) As Israel is not respecting most of the provisions of the Oslo Accords, we must use international law as our point of reference. Israel maintains effective control of the Gaza Strip and therefore, despite its 2005 pullout of illegal settlements and military presence from inside Gaza, it remains an Occupying Power. As an Occupying Power, Israel has rights and responsibilities. Its rights entitle Israel to take actions to ensure safety and public order, but not to completely isolate the occupied civilian population from the rest of the world, and furthermore, to deny the population basic supplies needed to ensure adequate food, shelter, medical care and education. Israel’s actions, as the Occupying Power, therefore constitute collective punishment. As our boat did not constitute a threat to Israel or its armed forces, and as our voyage to Gaza would not disturb the public order, Israel abused its authority by denying civilians in Gaza the right to receive the *Spirit of Humanity* and its cargo of medicine, school supplies and toys for children.
- (5) Israel’s stated reason for commandeering our vessel is that we were navigating into a blockaded area. Israel itself invoked the blockade on the Gaza Strip as its justification; not its authority under the Oslo Accords. Therefore, The Netherlands must take a position on the legitimacy of Israel’s blockade.

Mr. Balkenende, as the leader and representative of a people who experienced a brutal occupation during World War II, and as the head of state of a nation home to the International Court of Justice, the International Criminal Court, and leading institutions promoting international law, we would expect you and The Netherlands to be at the forefront of upholding human rights and humanitarian law. Your position towards Israel and its illegal blockade of the Palestinian people in Gaza goes beyond diplomatic positioning and borders on complicity. We urge you to lead the international community in acting to give meaning to international law.

Respectfully Yours,



Huwaida Arraf, Chairperson

⁵ Although Israel has not signed or ratified the Law of the Sea Convention, 158 countries have ratified and it is widely considered to codify customary international law. *See e.g.* Tullio Treves, Introduction, United Nations Convention on the Law of the Sea, Codification Division, Office of Legal Affairs, United Nations 2008; <http://untreaty.un.org/cod/avl/ha/uncls/uncls.html>.

⁶ *Id.* Sec. 4, Art. 33.